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POWER OF DIRECTORS TO APPOINT EXECUTIVE COMMITTEE. — An interesting question in the law of corporations is to what extent a board of directors may confide their powers to an executive committee. The right to delegate all their powers to such a committee, even though with the consent of the stockholders, would seem to be denied them by a dictum in a recent case. *Canada-Atlantic and Plant S. S. Co., Ltd. v. Flanders*, 145 Fed. Rep. 875 (C. C. A., First Circ.). On this point there is curiously little authority.

It is obvious that whether a board of directors may entrust their powers to an executive committee or not depends on the nature of their office. As to this, there are divergent views. One theory is that the directors are the agents of the stockholders to manage the business, and, as such, are unable to delegate their functions on the principle *delegatus non potest delegare*.¹ This view, however, seems unsound, for if it were true, the stockholders, being principals, could at any time take charge of the affairs of the corporation and manage them to suit their wishes. This, it is settled, they cannot do.² The other theory is that the directors represent the corporation completely, and can do what they as individuals within their own business could do. Hence, as principals, they can delegate the performance of acts which they themselves can perform.³ This view, likewise, is open to criticism. The directors have no common law powers as directors; they exercise merely granted powers.⁴ However discordant the authorities may seem, in the ultimate they agree that these powers are held by the directors in some sort of a fiduciary relation, and are to be exercised for the benefit of the stockholders after the analogy of a trust relation.⁵ It is axiomatic that a trustee may not delegate his duties as such to a third party, for it is the exercise of his judgment and his discretion which is required by the creator of the trust. It is believed that the same is true of directors.⁶ This being so, how far may they delegate their powers to an executive committee?

It may be admitted that, even in the absence of permission, the board of directors, however created, may delegate to agents or committees the doing of acts merely ministerial and the management of ordinary business, provided such business does not involve the exercise of executive functions regarding the "policy" of the corporation.⁷ The consent to delegate must be implied in such cases, for the directors in a large business are incapable of personally attending to its various details. It may also be admitted that if the statutes under which the corporation is organized, or its charter, contain provisions allowing the directors to entrust any or all of their duties to agents or committees, they may do so, for any duty to be exercised in a fiduciary relation may be delegated if the proper permission is given.⁸ And the same is true where the charter vests the management of the business in

¹ *Gillis v. Bailey*, 21 N. H. 149, 162.

² *Gashwiler v. Willis*, 33 Cal. 11. See 19 HARV. L. REV. 620.

³ *Jones v. Williams*, 139 Mo. 1, 26.

⁴ *Town of Royalton v. The Royalton and Woodstock Turnpike Co.*, 14 Vt. 311, 323.

⁵ *Cook v. The Berlin Woolen Mill Co.*, 43 Wis. 433; *In re Wincham Shipbuilding, etc., Co.*, 9 Ch. D. 322, 328.

⁶ *Perry v. Tuscaloosa Cotton Seed Oil Mill Co.*, 93 Ala. 364, 371.

⁷ *Andres v. Fry*, 113 Cal. 124; *The Pres., etc., of the Berks, etc., Turnpike Co. v. Myers*, 6 Serg. & R. (Pa.) 12.

⁸ *Totterdell v. The Fareham Blue Brick & Tile Co., Ltd.*, L. R. 1 C. P. 674; *Taylor v. The A. & M. Ass'n of West Ala.*, 68 Ala. 229.

the stockholders, who by by-laws create a board of directors and also consent to the delegation of powers to an executive committee.⁹ In all other cases, however, the power to delegate the duties of deciding the policy of the corporation and of generally overseeing its affairs should be denied. It is the exercise of the discretion and judgment of the directors for the benefit of the stockholders which is expected and required. It is their discretion and judgment that should be exercised.¹⁰

BY WHAT LAW DOMICILE IS DETERMINED. — Whatever force the laws of one country have in another depends solely on the laws of the latter.¹ Thus it is by virtue of their own laws that England² and most of the American states³ permit the movables of an intestate to descend according to the law of that country where the deceased was domiciled at the time of his death. The same is true of the general rule that, subject to some exceptions, the validity of a will, both in England⁴ and America,⁵ is determined by the law of the testator's last domicile. For this reason the foreign law is treated as a fact, and is proved as such.⁶ The result is, that while the territorial law of the state where the movables are situated is the only law which binds them, disposition of them will actually be determined by the law of the owner's last domicile.

Domicile of choice is an inference or conclusion which the common law draws from the fact of residence coupled with the appropriate intent. Both England and America agree on this point, though they differ as to the nature of the intent required.⁷ A recent English case, however, raises an interesting question. Does the law of that country where the deceased resided, or the law of that country where the movables are situated, determine where the deceased was domiciled? A British subject, born in England, had resided in France under such circumstances that the English law would deem him domiciled there, although he did not acquire a domicile which the French law would recognize. He died, leaving a will disposing of movables in England. The English court decided that both as to validity and construction the will should be governed by English law. *In re Bowes*, 22 T. L. R. 711 (Ch. D., July 18, 1906). The case follows without discussion a prior Chancery decision which, on similar facts as to the domicile of a Maltese person in Baden, decided that Maltese law governed the succession to the English movables of the intestate.⁸ Neither decision cited any authority on this point, but both proceeded on the apparently wrong assumption that the

⁹ *Union Pac. R. R. v. Chicago, R. I. & Pac. Co.*, 163 U. S. 564.

¹⁰ *Tempel v. Dodge*, 89 Tex. 68; *Weidenfeld v. Sugar Run R. R. Co.*, 48 Fed. Rep. 615; *Charlestown Boot & Shoe Co. v. Dunsmore*, 60 N. H. 85. *Contra*, *Hoyt v. Thompson's Executor*, 19 N. Y. 207; *Burrill v. Nahant Bank*, 2 Met. (Mass.) 163; *The Black River Improvement Co. v. Holway*, 85 Wis. 344.

¹ See Story, Conf. of Laws, §§ 18, 20, 23.

² *Crispin v. Doglioni*, L. R. 1 H. L. 301.

³ See *Wilkins v. Ellett*, 108 U. S. 256; *Lawrence v. Kittredge*, 21 Conn. 577.

⁴ *Goods of Maraver*, 1 Hagg. Eccl. 498; *Enohin v. Wylie*, 10 H. L. Cas. 1; *Whicker v. Hume*, 7 H. L. Cas. 123.

⁵ *Dupuy v. Wurtz*, 53 N. Y. 556; *Talbot v. Chamberlain*, 149 Mass. 57.

⁶ See *Bremer v. Freeman*, 10 Moore P. C. 306; *Haven v. Foster*, 9 Pick. (Mass.) 112.

⁷ *Udny v. Udny*, L. R. 1 H. L. Sc. 441; *Gilman v. Gilman*, 52 Me. 165; *Wilbraham v. Ludlow*, 99 Mass. 587.

⁸ *In re Johnson*, [1903] 1 Ch. 821.